TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903

No. 96

BERNARD SCHEIF, PLAINTIFF IN ERROR,

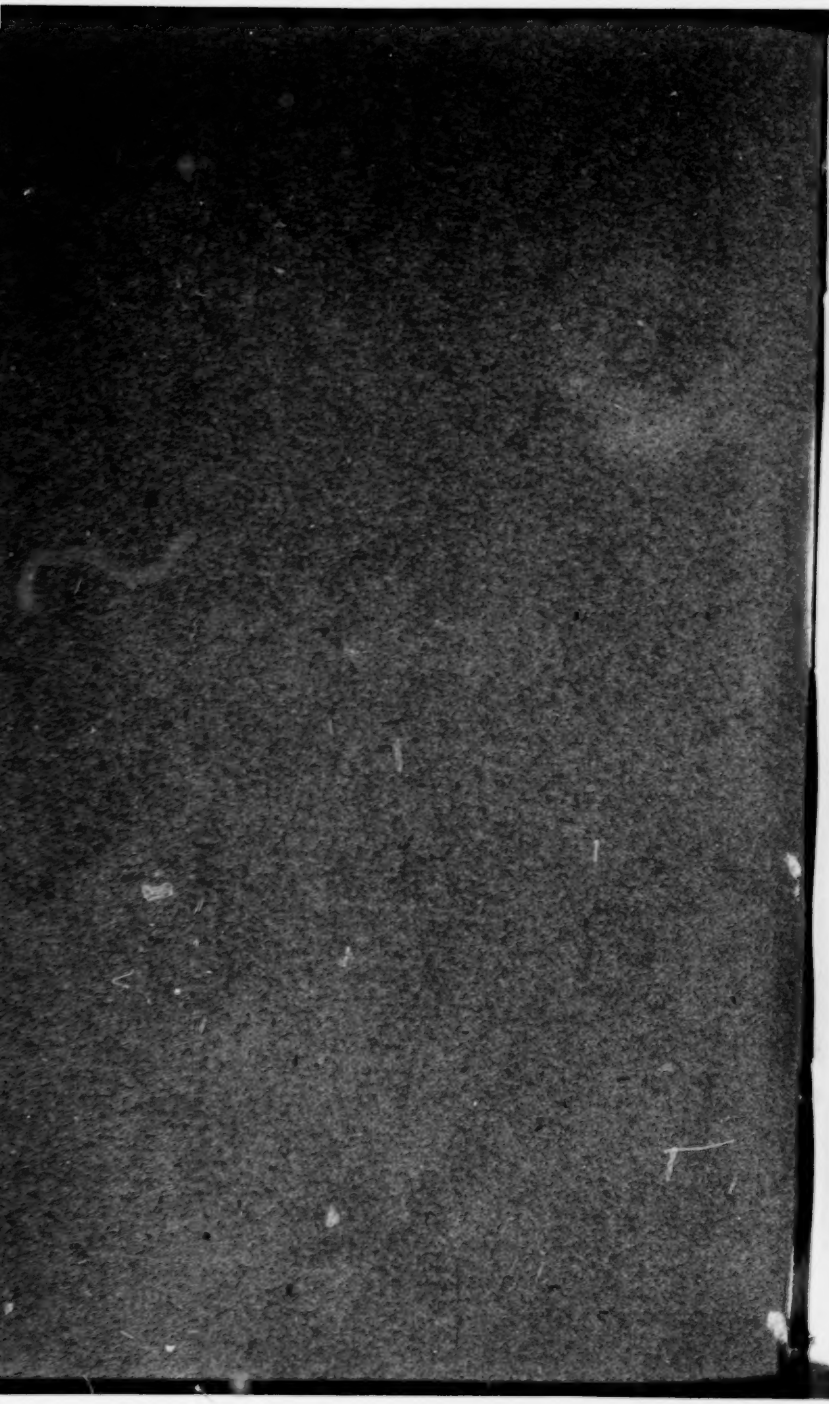
vs.

THE CITY OF ST. LOUIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI

FILED JUNE 6, 1903.

(16,975.)



(18,573.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 62.

BERNARD SCHEFE, PLAINTIFF IN ERROR,

vs.

THE CITY OF ST. LOUIS.

ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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1 The United States of America to City of St. Louis, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at Washington, D. C., not exceeding thirty days from and after the day this citation bears date, pursuant to a writ of error, filed in the clerk's office of the supreme court of Missouri, wherein Bernard Schefe is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Gavin D. Burgess, chief justice of the supreme court of Missouri, this 4th day of April, in the year of our Lord one thousand nine hundred and two.

G. D. BURGESS,
Chief Justice.

1½ UNITED STATES OF AMERICA, } ss:
Central Division of the Western District of Missouri, }

I hereby acknowledge due service of the within citation this 15th day of April A. D. 1902.

CHAS. W. BATES,
Attorney for Defendant in Error.

[Endorsed:] Supreme court of Missouri. City of St. Louis def't in error *vs.* Bernard Schefe, pl'ff in error. Citation. Filed Apr. 23 1902 Jno. R. Green clerk.

2 UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judges of the supreme court of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, at the October term, 1901, thereof between City of St. Louis, respondent and Bernard Schefe, appellant, a manifest error hath happened, to the great damage of the said Bernard Schefe, appellant as aforesaid, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., not exceeding thirty days from and after the date of the citation in said cause, in

the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States should be done.

Seal of the United States Circuit Court for the Western District of Missouri, Central Division.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 4th day of April, in the year of our Lord one thousand nine hundred and two.

Issued at office in the city of Jefferson with the seal of the circuit court of the United States, for the western district of Missouri central division dated as aforesaid.

H. C. GEISBERG,
Clerk Circuit Court United States,
Western District of Missouri, Central Division.

Allowed by

G. D. BURGESS,
Chief Justice.

2½ [Endorsed:] No. — United States circuit court, western district of Missouri, central division. City of St. Louis d'f't in error *vs.* Bernard Schefe pl'ff in error Writ of error to the supreme court of the State of Missouri. Filed Apr. 23 1902 Jno. R. Green clerk.

Return to Writ.

UNITED STATES OF AMERICA, } *ss:*
Supreme Court of Missouri, }

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case together with all things concerning the same.

In witness whereof, I herewith subscribe my name and affix the seal of said supreme court, at the city of Jefferson, this 30th day of April, A. D. 1902.

[Seal of the Supreme Court of Missouri.]

JNO. R. GREEN, *Clerk.*

3 STATE OF MISSOURI, *sct:*

Be it remembered, that heretofore, to-wit, on the 27th day of November, 1899, there was filed in the office of the clerk of the supreme court of the State of Missouri, a transcript in a certain cause, wherein The City of St. Louis was respondent and Bernard Schefe was appellant, which said transcript is in words and figures as follows, to-wit:

STATE OF MISSOURI, } ss:
City of St. Louis, }

In the St. Louis Court of Criminal Correction.

Be it remembered that on the 26th day of May, in the year of our Lord eighteen hundred and ninety-eight, there was filed in the office of the clerk of the St. Louis court of criminal correction, by the clerk of the first police district court of the city of St. Louis, a transcript and the papers in the case of The City of St. Louis *versus* Bernard Schefe; which transcript and papers are in the words and figures following, to-wit:

STATE OF MISSOURI, } ss:
City of St. Louis, }

CITY OF ST. LOUIS, *May 6th, A. D.* 1898.

Bernard Schefe to the City of St. Louis, Dr.

To five hundred dollars for the violation of an ordinance of said city, entitled "An ordinance in revision of the ordinances of the city of St. Louis, and to establish new ordinance provisions for the government of said city," being ordinance number 18407, section 5, approved April 6th, 1896.

In this, to-wit: In the city of St. Louis and the State of Missouri, on the 5th day of May, 1898, and on divers other days and times prior thereto, the said Bernard Schefe being the owner and occupant of premises known as No. 3012 Osage St., city of St. Louis State of Missouri, did then and there at said time, and place and on said premises erect, build and establish a certain dairy and a certain cowstable, without first having obtained permission
4 so to do from the municipal assembly by proper ordinance.

2nd. And the said Bernard Schefe defendant herein did then and there at the time and place aforesaid, and on the premises aforesaid maintain a certain dairy and a certain cow stable without permission so to do having been obtained from the municipal assembly by proper ordinance, said dairy and cow stable not being in operation at the time of the approval of ordinance No. 18407 on April 6th, 1896.

Contrary to the ordinance in such case made and provided.

On information of Charles W. Francis.

H. A. CLOVER, JR.,
City Attorney of the City of St. Louis.

The State of Missouri to the city marshal of the city of St. Louis, Greeting:

Whereas, the city attorney of the city of St. Louis hath this day filed in the first district police court of said city, his written state-

ment, charging that Bernard Schefe has been guilty of violating an ordinance of the city of St. Louis entitled "An ordinance in revision of the ordinances of the city of St. Louis and to establish new ordinance provisions for the government of said city," being ordinance number 18407, section 5, clause — approved April 6 1896, by establishing and maintaining on premises 3012 Osage St., city of St. Louis, Mo., a certain dairy and cow-stable without permission so to do from the municipal assembly by proper ordinance, said dairy and cow-stable not being in operation at the time of the approval of ordinance 18407. These are, therefore, to command you to summon the said Bernard Schefe to appear before the police justice of the city of St. Louis, at the first district police court of said city on the 13th day of May 1898 to answer to the city of St. Louis, in an action of debt in the sum of five hundred dollars for the violation of the above entitled ordinance, and have you then and there this writ.

Given under my hand this 6th day of May, 1898.

THOS. H. PEABODY,
Police Justice of the First District
Court of the City of St. Louis.

5

STATE OF MISSOURI, } ss:
City of St. Louis, }

The State of Missouri to Leo Frank, Dr. Ellis, Kate Meyerscough, Edward Rose, H. D. M. Sommer, Barbara Muelharaith, Greeting:

You are hereby commanded, that, laying aside all excuses and delays, you personally be and appear before the police justice of the city of St. Louis, at the first district police court of said city, on the 13th day of May, A. D. 1898, at 9 o'clock a. m., to testify on the trial of a cause there pending, wherein The City of St. Louis is plaintiff, and Bernard Schefe is defendant, on the part of the plaintiff, and of this fail not at your peril.

Given under my hand, this 6th day of May, 1898, by order of the said police justice.

JOHN F. McENNIS,
Clerk of the First District Police Court
of the City of St. Louis.

Executed the within writ, in the city of St. Louis, on the 10 day of May, 1898, by reading a true copy of same to the within named defendant.

HENRY REINSTAEDLER,
City Marshal,
By GEO. VOLLMER,
Deputy City Marshal.

In the First District Police Court.

CITY OF ST. LOUIS
vs.
BERNARD SCHEFE.

Now comes the defendant and moves the court to quash the summons and statement herein for the following reasons, to wit:

1st. Because said statement on information does not set forth facts sufficient to constitute a violation for any ordinance of the city of St. Louis.

2nd. Because ordinance No. 18407 is void and being un-
6 reasonable and oppressive to the citizen and the property owner and especially section 5 thereof.

3rd. Because section 5 of said ordinance is unconstitutional and void for the reason that it operates to deprive a person of property without due process of law and without just compensation.

4th. Because the municipal assembly has no power or authority to enact section 5 of said ordinance.

5th. Because said section 5 is in contravention of common right and abridges the rights, privileges and immunities of the citizen and is unconstitutional and void.

6th. Because said section 5 is void as being a delegation of the power of the municipal assembly to some one else.

E. F. STONE,
Attorney for Defendant.

This motion overruled.
THOS. H. PEABODY.

Appeal Bond.

STATE OF MISSOURI, } *ss:*
City of St. Louis, }

CITY OF ST. LOUIS
vs.
BERNARD SCHEFE.

Application for appeal.

Affidavit.

Be it remembered, that on 13 day of May A. D. 1898, personally appeared before the police justice of the first district police court of the city of St. Louis, Bernard Schefe and made oath, that this application for an appeal is not made for the purpose of vexation or delay, but because he verily believes he is aggrieves by the judgment of the police justice of the first district police court.

BERNARD SCHEFE.

Sworn to and subscribed before me this day and year first above written.

THOS. H. PEABODY,
7 *Police Justice of the First District Police Court of the City of St. Louis.*

Security Bond.

CITY OF ST. LOUIS
vs.
BERNARD SCHEFE.

Before the police justice of the first district police court of the city of St. Louis.

We, Bernard Schefe, as principal, and Gustav Niederer as security, acknowledge ourselves to owe, and stand indebted to the City of St. Louis in the sum of two dollars, upon this condition:

Whereas, Bernard Schefe has appealed from the verdict and judgment rendered against him for a fine and imprisonment before the police justice of the first district police court of the city of St. Louis, in a persecution wherein The City of St. Louis was plaintiff, and Bernard Schefe defendant, to the St. Louis court of criminal correction. Now, if the said defendant shall appear before the St. Louis court of criminal correction, and prosecute his appeal with due diligence, to a decision, and if the judgment of the said police justice be affirmed, or, upon a trial anew in said court, judgment be given against him, shall pay or abide by the same, and obey every order which shall be made in the premises, and not depart the court without leave; or, if his appeal be dismissed, he shall pay the judgment of the police justice, together with all costs and render himself in execution, and abide by and perform the judgment of said police justice as therein adjudged against him, this recognizance shall be void, otherwtse it shall remain in force.

Given under our hands, this 15th day of May, A. D. 1898.

Principal, BERNARD SCHEFE.
Security, GUSTAV NIEDERER.

Taken and approved, and I certify that the above recognizance was executed and acknowledged before me this — day of —— A. D. 189–.

THOS. H. PEABODY,
8 *Police Justice, First District Police Court, City of St. Louis.*

Residence of security, 3012 Osage street. Property lies —.

(*Police Court Transcript.*)

In the First Police District Court of the City of St. Louis.

THE CITY OF ST. LOUIS
vs.
BERNARD SCHEFE.

Charge,

Violating city ordinance number 18407, section 5, approved April 6, 1896.

Debt, five hundred dollars for the violation of an ordinance of said city, entitled "An ordinance in revision of the ordinances of the city of St. Louis, and to establish new ordinance provisions for the government of said city," being ordinance number 18407, section 5, approved April 6th, 1896.

On the 6th day of May, 1898, the city attorney of the city of St. Louis files his written statement charging the above named defendant with violating the above entitled ordinance, whereupon, a summons is issued dated May 6th, 1898, and directed to the marshall of the city of St. Louis returnable forthwith. Returned, duly executed on the 10 day of May, 1898, and the case set for May 13, 1898.

On the 13th day of May, 1898, the case is called, and defendant by his attorney files a motion to quash.

The motion is overruled by the court and now comes the attorney for the City of St. Louis, and the defendant in his own proper person also comes, and having seen and heard read the information herein, says he is not guilty in manner and form as therein charged. And the court having heard the evidence and being fully advised of and concerning the premises, doth find the defendant guilty as charged, and assess his punishment at a fine of one hundred dollars.

9 It is, therefore, considered and adjudged by the court that the said defendant for his said offense pay to the City of St. Louis a fine of one hundred dollars, together with the costs herein accrued.

Thereupon comes defendant and files his affidavit and bond, with Gustav Niederer as security, for appeal, whereupon an appeal is taken to the St. Louis court of criminal correction.

And afterwards to-wit, on the 4th day of June the following proceedings were had, to-wit:

In the St. Louis Court of Criminal Correction.

SATURDAY, *June* 4, *A. D.* 1898.

THE CITY OF ST. LOUIS
vs.
BERNARD SCHEFE.

Bow at this day comes the defendant by his attorney and files a motion to quash the writ herein.

And afterwards to-wit on the 6th day of June, A. D. 1898, the following further proceedings were had to-wit:

In the St. Louis Court of Criminal Correction.

MONDAY, *June 6th, A. D.* 1898.

THE CITY OF ST. LOUIS
vs.
BERNARD SCHEFE.

Now at this day the court having heard the arguments of counsel touching the motion to quash the writ herein and being fully advised of and concerning the same doth order and determine that the same be overruled.

And afterwards to-wit, on the 26th day of November, A. D. 1898, the following further proceedings were had to-wit:

In the St. Louis Court of Criminal Correction.

SATURDAY, *November 26th, A. D.* 1898.

THE CITY OF ST. LOUIS
vs.
BERNARD SCHEFE.

Now at this day comes the attorney for the city, and the defendant in his own proper person also comes, and having seen and heard the writ herein, says he is not guilty in manner and form as therein charged, and the court, having heard the evidence and being fully advised of and concerning the same doth find the defendant guilty of the said charge. It is therefore considered and adjudged by the court, that the said defendant, for his said offense, pay to the City of St. Louis, for use of the City of St. Louis a fine of one hundred dollars, together with the costs herein accrued, and that execution issue therefor.

And afterwards, to-wit, on the 28th day of November, A. D. 1898, the following further proceedings were had, to-wit:

In the St. Louis Court of Criminal Correction.

MONDAY, *November 28th, A. D.* 1898.

THE CITY OF ST. LOUIS
vs.
BERNARD SCHEFE.

Now at this day comes the defendant by his attorney and files a motion for a new trial herein and the court having heard the arguments of counsel touching said motion, doth order and determine that the said motion be overruled.

And afterwards, to-wit, on the 1st day of December, A. D. 1898, the following further proceedings were had to-wit:

In the St. Louis Court of Criminal Correction.

THURSDAY, *December 1st, A. D.* 1898.

THE CITY OF ST. LOUIS
vs.
BERNARD SCHEFE.

Now at this day comes the defendant by his attorney and files a motion in arrest of judgment herein, and the court having heard the arguments of counsel touching said motion and being fully advised of and concerning the same doth order and determine that the said motion be overruled. Thereupon comes the attorney for the city and the defendant in his own proper person also comes.

Thereupon the defendant files his bill of exceptions herein duly signed and sealed by the court and prays an appeal from the judgment of this court to the supreme court of the State of Mis-
11 souri, and the court being of the opinion that there is probable cause for such appeal doth grant the same, and the defendant having filed his affidavit and appeal bond with good and sufficient security approved by the court, it is ordered by the court that this appeal shall operate as a supersedeas until this cause be heard and determined by the said supreme court of the State of Missouri.

Which bill of exceptions is in words and figures as follows: to wit:

In the St. Louis Court of Criminal Correction.

THE CITY OF ST. LOUIS, Plaintiff,
vs.
BERNARD SCHEFE, Defendant.

Be it remembered that on the trial and hearing of this cause the following proceedings were had: Defendant moves the court to quash the statement and summons, as follows, to-wit:

In the St. Louis Court of Criminal Correction.

CITY OF ST. LOUIS
vs.
BERNARD SCHEFE.

Now comes the defendant and moves the court to quash the writ and statement in the above entitled cause, for the following reasons, to-wit:

1st. Because the statement does not set forth facts sufficient to constitute any offense under the charter and ordinances of the city of St. Louis.

2nd. Because section five of said ordinance No. 18407 is unconstitutional and void for the reason that it operates to deprive a person of property without due process of law.

3rd. Because said section five is void as being unequal, unreasonable, oppressive, partial and discriminating in its application to the citizen and property owner.

4th. Because said section 5 is void, there being no power or authority granted to the municipal assembly by the charter of the city of St. Louis to pass the same.

12 5th. Because said section 5 is retrospective in its nature and application, therefore in violation of the rights of private property.

6th. Because said section is void being a delegation of the powers of the municipal assembly.

7th. Because said section 5 is in violation of section 30 art. II of the constitution of the State of Missouri.

8th. Because said section 5 is in violation of section 4 of art. II of the constitution of the State of Missouri.

9th. Because said section 5 is void as being in violation of the XIV amendment to the Constitution of the United States in that, "No State shall make or enforce any law which shall abridge the privilege- or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

10th. Because said section 5 is void, as having a district tendency to create and perpetuate a monopoly.

E. F. STONE,
Attorney for Defendant.

Said motion was overruled by the court to which ruling of the court the defendant then and there duly excepted.

The defendant pleaded not guilty to the charge made in the statement; the cause was submitted to the court upon an agreed statement of facts as follows, to-wit:

In the St. Louis Court of Criminal Correction.

CITY OF ST. LOUIS
vs.
BERNARD SCHEPE.

Agreed Statement of Facts.

It is hereby agreed and stipulated by and between the parties to the above entitled cause by their respective attorneys, that said cause may be submitted and tried upon the following statements of facts, to-wit:

13 The plaintiff, The City of St. Louis, is a municipal corporation, organized and existing under the laws of the State of Missouri, and the defendant is the owner and occupant of certain premises known as No. 3012 Osage street, in the city of St. Louis, State of Missouri, upon which was located on the 5th day of May, 1898, a dwelling house and frame stable, which said stable had been erected and built prior to the ownership and occupancy of said premises by said defendant.

Defendant who was at the time a dairyman of several years' standing in the said city, did on or about the 5th day of May, 1898, place in said stable a number of cows and did proceed to conduct upon said premises a dairy establishment, and produce and sell milk therefrom, and was doing so at the time of the commencement of this action in the first district police court; that defendant commenced the operation of said dairy establishment on or about the aforesaid date without having obtained permission to do so from the municipal assembly by ordinance, and defendant did maintain on said premises a dairy and cow stable without permission to do so having been obtained from the municipal assembly.

Said dairy and cow stable was not in operation upon said premises at the time of the approval of ordinance No. 18407 on April 6th, 1896. The said section 5 of said ordinance No. 18407 being as follows, to-wit:

"SEC. No. 5. No dairy or cow stable shall hereafter be erected, built or established within the limits of this city without first having obtained permission so to do from the municipal assembly by proper

ordinance, and no dairy or cow stable not in operation at the time of the approval of this ordinance shall be maintained on any premises unless permission so to do have been obtained from the municipal assembly by proper ordinance. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred nor more than five-hundred dollars."

That no question of nuisance or no nuisance shall be con-
14 sidered in this case.

It being hereby distinctly understood, agreed and stipulated that the issue and question submitted to the court for decision and determination is the validity or invalidity of the said section 5, of ordinance No. 18407; and upon which judgment shall be had either by plaintiff or defendant as the court may find. Section 5 of ordinance No. 18407 as set out herein may be considered in evidence for the purposes of this case.

THE CITY OF ST. LOUIS,
By CHAS. H. BROCK, *Attorney.*
BERNARD SCHEFE,
By E. F. STONE, *Attorney.*

Under this stipulation the court found and adjudged the defendant guilty as charged, and assessed his fine at one hundred dollars and costs.

And on the 28th day of November, 1898, and within four days after the rendering of said judgment, the defendant filed his motion for a new trial as follows, to-wit:

CITY OF ST. LOUIS, }
State of Missouri, } *ss:*

In the St. Louis Court of Criminal Correction.

CITY OF ST. LOUIS }
vs.
BERNARD SCHEFE. }

Now comes defendant and moves the court to set aside the finding and judgment in this cause and grant a new trial therein for the following reasons, to-wit:

1st. The finding of the court is against the evidence presented at the trial.

2nd. The judgment is against the weight of the evidence.

3rd. The judgment is against the law.

4th. The judgment is against the law and the evidence.

5th. Because the court erred in overruling motion of defendant to quash the writ and statement filed in said cause.

15 6th. Because the statement does not state facts sufficient to constitute a cause of action, nor any offense under the ordinances of the city of St. Louis.

7th. Because section 5 of said ordinance No. 18407 is unconstitutional and void for the reason that it operated to deprive a person of property without due process of law.

8th. Because said section 5 is void as being unreasonable and oppressive to the citizen and property owner.

9th. Because said section 5 is void there being no power or authority granted to the municipal assembly by the charter of the city of St. Louis to pass the same.

10th. Because said section 5 is retrospective in its nature and application, therefore in violation of the rights of private property.

11th. Because said section 5 is void, being a delegation of the powers of the municipal assembly.

12th. Because said section 5 is in violation of section 30 art. 11 of the constitution of the State of Missouri.

13th. Because said section 5 is in violation of section 4 of art. II of the constitution of the State of Missouri.

14th. Because said section 5 is void as being in violation of the XIV amendment of the Constitution of the United States in that "No State shall make or enforce any law which shall abridge the privilege- or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

E. F. STONE,
Attorney for Defendant.

Which said motion the court, on the 28th day of November, 1898, overruled, to which ruling and order of the court the defendant then and there duly excepted.

And on the 1st day of December, 1898, and within ten days after the said motion for a new trial was overruled, defendant filed
16 his motion in arrest of judgment as follows:

CITY OF ST. LOUIS, }
State of Missouri. }

In the St. Louis Court of Criminal Correction.

THE CITY OF ST. LOUIS }
vs. }
BERNARD SCHEFE. }

Now comes the defendant and moves the court to arrest the judgment in this cause for the reasons, following, to wit:

1st. That upon the record said judgment is erroneous.

2nd. That the statement and summons does not state facts sufficient to constitute a cause of action against the defendant.

3rd. The finding and judgment of the court are not responsive to the issues made by the pleadings.

E. F. STONE,
Attorney for Defendant.

Which said motion in arrest of judgment the court on the 1st day of December, 1898, overruled, to which ruling and order of the court the defendant then and there duly excepted. And that the above matters and things, rulings and exceptions may be made a part of the record, defendant tenders this his bill of exceptions, and prays that the same may be signed and sealed as such, which is accordingly done this 1st day of December, 1898.

DAVID MURPHY, [SEAL.]
Judge of the St. Louis Court of Criminal Correction.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, Phillip H. Zepp, clerk of the St. Louis court of criminal correction, do hereby certify that the above and foregoing is a full, true and complete transcript of the record and proceedings had in said court, in the cause of The City of St. Louis *versus* Bernard Schefe, as fully as the same remains of record and on file in my office.

17 In testimony whereof, I have hereunto set my hand and affixed the seal of said court at office, in the city of St. Louis, this 1 day of February in the year of our Lord eighteen hundred and ninety-nine.

[L. S.] ALFRED J. WAGGEMANN, *Clerk.*

And afterwards, to wit, on the 9th day of February, 1902, the further following proceedings were had in said cause, viz:

CITY OF ST. LOUIS, Resp.,
v.
BERNARD SCHEFE, App.

Comes now the said respondent by attorney, and files its motion to transfer this cause to the court in banc.

Which said motion is in words and figures as follows, to wit:

In the Supreme Court, State of Missouri.

CITY OF ST. LOUIS
vs.
BERNARD SCHEFE.

And now comes City of St. Louis, plaintiff in the above entitled cause, and suggests to the court that the issues in this case are

practically identical with those in the case of City of St. Louis *vs.* John G. Fischer, now pending in this court, which latter case was by order of the court, division No. 2, transferred to court in banc for hearing, and moves, the court to transfer the case of City *vs.* Schefe to court in banc and order a hearing of the same with the case of City *vs.* Fischer.

CHAS. W. BATES,
Att'y for City of St. Louis.

And afterwards, to wit, on the 24th day of January, 1902, the further following proceedings were had in said cause, viz:

* * * * * * *

18 CITY OF ST. LOUIS, Resp.,
v.
BERNARD SCHEFE, App.

Come now the said parties by attorneys, and after arguments herein, submit these causes to the court.

And afterwards, to-wit, on the 19th day of February, 1902, the further following proceedings were had in said cause, viz:

CITY OF ST. LOUIS, Respondent,
vs.
BERNARD SCHEFE, Appellant.

Appeal from St. Louis court of criminal correction.

Now at this day come again the parties aforesaid, by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said St. Louis court of criminal correction rendered, be in all things affirmed, and stand in full force and effect; and that the said respondent recover against the said appellant its costs and charges herein expended, and have therefor execution. (Opinion filed.)

Which said opinion is in words and figures as follows, to-wit:

In the Supreme Court of Missouri, in Banc, January Call, 1902.

CITY OF ST. LOUIS, Respondent,
vs.
BERNARD SCHEFE, Appellant.

This is an action by the City of St. Louis to recover a fine of five hundred dollars for a violation of section 5 of an ordinance of said city No. 18,407, providing that no person within the limits of said city shall hereafter erect, build or maintain a dairy or cow stable,

without having first received permission so to do by proper ordinance.

The cause was tried on an agreed statement of facts and defendant was fined $100.00 by the court of criminal correction.

As he challenged the constitutionality of the ordinance, the appeal was sent to this court.

All questions raised in argument and brief have been
19 passed on in the case of The City of St. Louis *v.* Fischer, which was heard at the same time. For the reasons assigned in the opinion this day rendered in that case, the judgment of the court of criminal correction is affirmed.

Burgess, C. J., Robinson, Brace, Marshall and Valliant JJ. concur; Sherwood J. dissents.

JAS. B. GANTT.

And which said opinion in the case of City of St. Louis against Fischer, is in words and figures as follows, viz:

In the Supreme Court of Missouri, Division No. 2, October Term, 1901.

THE CITY OF ST. LOUIS, Respondent,
vs.
JOHN G. FISCHER, Appellant.

This is a civil action by the City of St. Louis to recover a fine of $100.00 for the violation of section 5 of a city ordinance of said city numbered 18407, approved April 6th, 1896, which said section is in these words:

"No dairy or cow stable shall hereafter be erected, built or established within the limits of this city without first having obtained permission so to do from the municipal assembly by proper ordinance, and no dairy or cow stable not in operation at the time of the approval of this ordinance shall be maintained on the premises unless permission so to do shall have been obtained from the municipal assembly by proper ordinance. And persons violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars nor more than five hundred dollars."

The complaint charged that defendant in the city of St. Louis and State of Missouri *did* on the 16th day of November, 1898, and on divers other days and times prior thereto was the occupant of certain premises known as 7208 and 7210 North Broadway in said city, and did then and there erect, build, and establish on said premises a dairy and cow stable without forst having obtained permission so to do from the municipal assembly by proper ordinance, and furthermore did at said times and place maintain said dairy and cow stable without having obtained permission from said
20 municipal assembly of said city by proper ordinance and that said dairy and cow stable was not in operation at the

time of the approval of said ordinance No. 18407, to-wit, April 6th, 1898, contrary to the said ordinance.

The defendant was found guilty in the police court and appealed to the court of criminal correction. In the last mentioned court he moved to quash the complaint on nine grounds, as follows:

1st. Because the statement does not set forth facts sufficient to constitute any offense under the ordinances of the city of St. Louis.

2nd. Because section 5 of said ordinance No. 18407, is unconstitutional and void for the reason that it operates to deprive a person of property without due process of law.

3rd. Because said section 5 is void as being unreasonable and oppressive to the citizen and the property owner.

4th. Because said section is void, there being no power or authority granted to the municipal assembly by the charter of the city of St. Louis to pass the same.

5th. Because said section is retrospective in its nature and application and therefore in violation of the rights of private property.

6th. Because said section 5 is void, being a delegation of the powers of the municipal assembly.

7th. Because said section is in violation of section 30 art. II of the constitution of the State of Missouri.

8th. Because said section 5 is in violation of section 4 of article II of the constitution of Missouri.

9th. Because said section 5 is void as being in violation of the XIV amendment to the Constitution of the United States in that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Nor shall any State deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws."

The court of criminal correction overruled this motion
21 and thereupon entered his plea of not guilty and the cause was submitted to that court upon an agreed statement of facts, without a jury, and the court found defendant guilty of a violation of said ordinance and fined him $100.00, from which he appeals to this court.

The agreed statement of facts is in these words:

"It is hereby agreed and stipulated by and between the parties to the above entitled cause by their respective attorneys, that said cause may be submitted and tried upon the following statement of facts, to wit:

The plaintiff, The City of St. Louis, is a municipal corporation, organized and existing under the laws of the State of Missouri and defendant is and was on the sixteenth day of November, 1898, the occupant of certain premises known as 7208 and 7210 North Broadway, in the city of St. Louis, State of Missouri, upon which premises, at said time, stood a dwelling house and frame stable which had been erected and built prior to the occupancy of said premises by defendant.

At the time of the approval of ordinance No. 18407 of said city

and State, said premises, buildings, and stable were occupied and in use by a certain other party than this defendant for the purpose of operating a dairy and maintaining a cow stable, and this defendant was, at the same time, operating a dairy and maintaining a cow stable on premises known as No. 6305 Bulwer avenue, said city, and State. Some time in the month of March, 1898, the said premises at Nos. 7208 and 7210 North Broadway were abandoned as a dairy and cow stable, and the dwelling house thereon was occupied by a private family for residence purposes only, and no dairy or cow stable was maintained on said premises from March, 1898, until some time in September, 1898. In September, 1898, defendant moved his cows, about thirty in number, from premises No. 6305 Bulwer avenue, said city, on to premises Nos. 7208 and 7210 North Broadway said city, placed them in the old stable, and did proceed to conduct upon said premises a dairy establishment and produce from said cows milk, and sell the same to his customers for profit, and was so doing on the said sixteenth day of November, 1898, without having first obtained permission so to do from the municipal assembly by proper ordinance, as provided by section 5 of ordinance No. 18407, of the city of St. Louis, approved April 6, 1896.

22

It is hereby stipulated and agreed by the parties to this cause by their respective attorneys that the printed ordinance marked Exhibit A, which is attached and made a part of this agreed statement of facts, is a full, true and correct copy of said ordinance No. 18,407, and may be considered in evidence in this cause.

Section 5 of ordinance No. 18,407, with a violation of which defendant was charged, is as follows:

"SEC. 5. No dairy or cow stable shall hereafter be erected, built or established, within the limits of this city, without first having obtained permission so to do from the municipal assembly, by proper ordinance, and no dairy or cow stable not in operation at the time of the approval of this ordinance shall be maintained on any premises, unless permission so to do shall have been obtained from the municipal assembly by proper ordinance. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred nor more than five hundred dollars."

The transcript in this case is somewhat difficult to understand. It is either all record proper, or all bill of exceptions. There is nothing in the nature of the record proper showing a trial, the entry of judgment, the filing of any of the motions, or the action taken by the court thereon. There is nothing in the transcript showing any copy of the affidavit for appeal, the bond for appeal or the order granting an appeal to this court. There is nothing showing the filing of a bill of exceptions. At the same time these matters are set forth as if in a bill of exceptions, signed by the judge of the trial court.

I.

The city of St. Louis is a municipal corporation, existing under a charter framed and adopted *and adopted* by the qualified voters therein on the 22nd day of August, 1876, which took effect October 22nd, 1876 (State *ex rel. v.* Sutton, 3 M. A. 388) pur*d*uant to the provisions of sections 20, 21, 22, 23, 24 and 25 of article 9 of the
23 constitution of Missouri, 1875, and has all the force and effect of a charter which emanates from the General Assembly, Kansas City *vs.* Oil Co. 140 Mo. 458. By the 6th paragraph of section 26 of article 3 of the said charter the mayor and the municipal assembly of St. Louis are given power within the city, by ordinance not inconsistent with the constitution or any law of this State or the charter itself, "to *prohibit* the erection of soap factories, stock yards, and slaughter houses, pig pens, *cow stables and dairies*, coal oil and vitriol factories, within prescribed limits, and to remove and regulate the same; and to regulate or prevent the carrying on of any business which may be dangerous or detrimental to the public health."

On April 6th, 1896, the mayor and municipal assembly passed the ordinance set out in the accompanying statement making it a misdemeanor for any person thereafter to erect, build or establish or maintain within the limits of said city any dairy or cow stable without having first obtained permission so to do from the municipal assembly by a proper ordinance and prescribing a penalty for a violation thereof.

At the outset it will be observed that *express power* is conferred upon the mayor and municipal assembly to *prohibit*, and to remove and regulate cow stables and dairies *within prescribed limits.*

To the mayor and assembly is confided the power of fixing and *prescribing* the limits within which no dairy or cow stable shall be built or maintained in the city of St. Louis. As the grant in the charter is express, we are relieved from any discussion to demonstrate that the dairy business is of a character that brings it within the police power of the State and properly subjects it to rigid rules of regulation, and even absolute prohibition in large and populous cities. Indeed, few occupations are so peculiarly liable to cause injury by the sale of impure milk to people who purchase milk as a necessary article of food or which are more generally regarded as nuisances, even under favorable circumstances.

That the people of this State could delegate this power to
24 the municipality is no longer open to dispute. It clearly falls within the proper function of municipal government.

As the people of the State have conferred the power upon the city without restriction, it was entirely within the discretion of the mayor and assembly to prescribe the limits and it was competent to fix the boundaries of the city as prescribed limits and this was done by the ordinance 18407.

Counsel for defendant insists that the municipal assembly must have first designated certain districts within the city by metes and

bounds, within which no dairy or cow house should be erected or maintained, but the charter does not so command. It nowhere limits the prohibited territory to less than the whole city. Counsel, for defendant cites *In re* Linehan, 72 Cal. 114 as sustaining his position. But reference to that case will show that the charter power was "to exclude *from certain limits*" the obnoxious occupations and the city council had merely defined a district bounded by certain streets in which it should be unlawful for any person to keep more than two cows and the supreme court upheld the ordinance. No question of the power of the city of San Francisco to make such an ordinance applicable to the whole of said city arose in that case and nothing in the decision supports the proposition now advanced that the city of St. Louis must necessarily prescribe a district therein less than its municipal boundaries, and we have no doubt of the power under the charter to make the prescribed limits co-extensive with the city limits, and this we construe this ordinance to have done.

But learned counsel for defendant argues that because the city has not made the prohibition absolute and prevented all persons from erecting or maintaining dairies and cow stables anywhere in the city but has deemed it proper to say that no person should erect or maintain a dairy or cow stable without permission first obtained by a proper ordinance, this ordinance is void; that it provides for special privileges to one man by special ordinance which it might deny to another man, his next door neighbor. We think his position is entirely untenable. The charter confers not only the power *to prohibit*, but to remove and *regulate* and it was entirely competent for the assembly to decline to prohibit dairies altogether, but to impose upon all persons desiring to erect or maintain a dairy or cow stable to first obtain permission from the mayor and assembly by a duly enacted ordinance. Having absolute power to prohibit, it could make its own conditions. Railroad *v.* Kirkwood, 159 Mo. 239. As was said in St. Louis *v.* Howard, 119 Mo. *loc. cit.* 46. "Regulation" means a rule or order for management or government." So that paragraph 6 of section 26 of article 3 of the charter empowers the city (by *ordinance of course*, for that is the only way the city can legislate) to prescribe rules whereby slaughter houses may be erected or operated, or whereby such erection or operation may be checked or restrained, *either partially* or *in toto*, but in that case the defendant was acquitted because although the city had plenary powers in this regard, it had not seen fit to exercise them by an ordinance making it a misdemeanor to carry on or operate a slaughter house "*without first* having *obtained* permission so to do from the municipal assembly by proper ordinance."

In this case, the city has passed just such an ordinance and made it coextensive with the boundaries of the city, and just such an ordinance met the approval of this court in St. Louis *v.* Howard, 119 Mo. 47, the only difference being that in the last mentioned case it was forbidden to erect a slaughter house within three hundred feet of any dwelling house, whereas in this ordinance dairies

are prohibited throughout the city unless the assembly shall first permit them by proper ordinances.

We are asked to declare this ordinance void in the face of the unrestricted power in the charter because forsooth the assembly may at some time discriminate against one man and favor another. We cannot and shall not indulge any such presumption against the integrity of the municipal assembly, but shall, as was said in City *v.* Howard, 119 Mo. 50, assume that the municipal assembly before granting permission will inquire and determine whether the place and the neighborhood is a proper one in which to allow a
26 dairy to be maintained and will act impartially. "Such favorable presumptions are constantly indulged in regard to legislative action." State *ex rel. v.* Mead, 71 Mo. 272.

It is at once apparent that no iron-clad rule can fit every case. The assembly may well determine that the keeping of a dairy in the outskirts of a city where the population is sparse and the areas large would not be a nuisance whereas to permit a dairy in the thickly populated portion of the city, or near a school house, church or hospital, would seriously endanger the public health, and in the exercise of its plenary powers permit it in the one case, and prohibit it in the other, without being obnoxious to the criticism of partiality. Under the charter it is given legislative discretion in this matter. In our opinion the ordinance prescribed the limits and it was entirely proper and lawful to require every person desiring to erect or maintain a dairy to obtain permission by a proper ordinance and such an ordinance is the only defence to an action like this. City *v.* Howard 119 Mo. 47.

We can see no more objection to such an ordinance than could be urged against the granting of a franchise to run a street railroad on a particular street.

A railroad laid in a street without authority is a nuisance and yet it has never been held that an ordinance to be valid must permit everybody to maintain railways in all the streets.

It is a matter within the authority of the assembly.

II.

As to the objection that the ordinance violates the 14th amendment to the Constitution of the United States, it is sufficient to say that it does not contravene that amendment because it operates upon all persons alike, and that every man holds his property subject to the maxim that he must so use it as not to injure his neighbor.

Nothing in that amendment has shorn the States of their police power to prohibit or regulate unwholesome trade and occupations. Slaughter House cases, 16 Wall. 36; Tiedeman's State & Federal Control of Person & Property, p. 731; *In re* Linehan, 72 Cal.
27 114; State *v.* Broadbelt, 89 Md. 565; 2 Kent Com. 340; City of St. Louis *v.* Howard 119 Mo.; Eichenlaub *v.* St. Joseph, 113 Mo. 395.

Nothing in the Constitution of the United States or of this State

secures to any man the right to maintain a nuisance to the discomfort of the health of his neighbor.

It is not deemed necessary to answer seriatim all the objections to the constitutionality of this ordinance. We have considered them all and are satisfied they are not tenable or sound. There is nothing retrospective in the application of this ordinance to defendant. It was adopted in 1896. He began without the permission of a proper ordinance to carry on and maintain this dairy at the premises mentioned in the complaint in 1898, long after the ordinance was in force.

The ordinance is levelled at the maintenance of a dairy, the keeping of cows for the sale of milk, and the mere fact that the premises had once been so occupied prior to 1898, but subsequently abandoned for such a use, did not authorize defendant to start up a new dairy on said premises without the necessary condition precedent of a lawful ordinance. Accordingly we hold his conviction was proper and the judgment is affirmed. Burgess C. J. concurs in these views.

JAS. B. GANTT.

In the Supreme Court of Missouri, Court in Banc, October Term, 1902.

THE CITY OF ST. LOUIS, Respondent,
vs.
JOHN G. FISCHER, Appellant.

Per curiam:

Upon a rehearing by the court in banc the foregoing opinion of Gantt, J., in division No. 2, is adopted by the court in banc.

Burgess, C. J., Robinson, Brace, Marshall and Valliant, JJ., concurring therein. Sherwood J. dissenting and expressing his views in a dissenting opinion.

And afterwards, to-wit, on the 1st day of March, 1902, the
28 further following proceedings were had in said cause, viz:

* * * * * * *

ST. LOUIS, Resp.,
v.
BERNARD SCHEFE, App.

Come now the said appellants, by attorneys, and file their motions for rehearings herein.

Which said motion for rehearing is in words and figures as follows, to-wit:

In the Supreme Court, State of Missouri, in Banc, January Call, 1902.

CITY OF ST. LOUIS, Respondent,
vs.
BERNARD SCHEFE, Appellant.

Now comes the appellant in this cause by his attorney, and moves the court to grant him a rehearing in this cause, and in support of his motion sets out the following grounds:

I.

Irrespective of the extent of the power of the City of St. Louis to regulate and restrict the erection and maintenance of dairies and cow-stables, we urged in our brief that the ordinance prescribing restrictions and regulations must be so drawn as to prescribe the conditions exactly which are to determine who may, and under what conditions one may, engage in the dairy business. The municipal assembly cannot leave the question of determining each case, in which an ordinance may be applied for, to the unrestrained will or caprice of any officer or body of men.

We again refer the court to the cases of "unlawful delegation of power" cited in our brief, which cases are not referred to in the opinion of the court.

II.

On the Federal question raised in the case we urge that the cases of *In re* Tie Lay and Yick Wo *vs.* Hopkins, cited in our brief, are directly in point and sustain our position. We respectfully urge a reconsideration of this question for the reason that the court
29 in its opinion does not discuss the bearing of those cases on the case at bar, nor refer to them at all.

The facts set out in those cases are so similar to the facts in this case that we believe the decisions rendered by the U. S. courts in them are controlling in the case at bar.

Respectfully submitted.

G. N. FICKEISSEN,
Attorney for Appellant.

And afterwards, to-wit, on the 19th day of March, 1902, the further following proceedings were had in said cause, viz:

* * * * * * *

CITY OF ST. LOUIS, Resp.,
v.
BERNARD SCHEFE, App.

Now at this day the court having fully considered and understood the motion- heretofore filed for rehearings herein, doth order that said motion- be and the same are hereby overruled.

And afterwards to-wit, on the 23rd day of April, 1902, the further following proceedings were had in said cause, viz:

CITY OF ST. LOUIS, Respondent,
vs.
BERNARD SCHEFE, Appellant.

Now at this day, there is presented to the Honorable Gavon D. Burgess, chief justice of the supreme court of the State of Missouri in chambers, a writ of error to the Supreme Court of the United States, a citation directed to said respondent, citing and admonishing it to appear at a Supreme Court of the United States on the 4th day of May; an assignment of errors and a bond in the sum of five hundred dollars, which said writ of error is allowed, said citation signed, said assignment of errors filed, and said bond approved, ordered filed and made a part of the record herein.

Which said assignment of errors is in words and figures as follows, viz:

In the Supreme Court of the United States, —— Term, 1902.

30 BERNARD SCHEFE, Plaintiff in Error,
vs.
CITY OF ST. LOUIS, a Municipal Corporation, Defendant in Error.

Comes now Bernard Schefe, plaintiff in error, by his counsel and respectfully represents, that he feels himself to be aggrieved by the proceedings and judgment of the supreme court of the State of Missouri in the above entitled cause, and assigns error thereto as follows:

First. The court erred in deciding that a dairy and cow-stable are a nuisance *per se*.

Second. The court erred in deciding that the ordinance in question is a reasonable police regulation.

Third. The court erred in deciding that The City of St. Louis, defendant in error, has the authority to prohibit the operation of a dairy and cow-stable in every part of the corporate limits.

Fourth. The court erred in deciding, that The City of St. Louis, defendant in error, has the authority to remove existing dairies and cow-stables out of the corporate limits.

Fifth. The court erred in deciding that the ordinance in question does not tend to the destruction of a lawful business.

Sixth. The court erred in deciding that the ordinance in question does not violate section I of the IV amendment of the Constitution

the United States, in discriminating between persons of the same ss.

Seventh. The court erred in deciding that the ordinance in ques- n does not deprive persons of their property without due process law.

Eighth. The court erred in deciding that the ordinance in ques- n does not deny to persons within the same jurisdiction the equal otection of the law.

Ninth. The court erred in sustaining the judgment of the trial urt *court* in this cause.

Tenth. The court erred in rendering judgment in favor of the defendant in error and against the *defendant* in error in this cause.

Wherefore the said plaintiff in error prays the honorable urt to examine and correct the errors assigned and for a reversal the judgment of the supreme court of the State of Missouri en- ed in this cause.

Respectfully submitted,

CHAS. P. JOHNSON,
G. N. FICKEISSEN,
Counsel for Plaintiff in Error.

And which said bond is in words and figures as follows, viz:

Know all men by these presents, that we, Bernard Schefe, as prin- al, and Bernard Scheer and Hermann Immken as sureties, are held d firmly bound unto the City of St. Louis in the full and just sum five hundred dollars, to be paid to the said City of St. Louis, to ich payment well and truly to be made we bind ourselves, our rs, executors, and administrators, jointly and severally by these sents.

Sealed with our seals and dated this 19th day of April, in the year our Lord, one thousand nine hundred and two.

Whereas, lately at the October term, A. D. 1901, of the supreme urt of Missouri, in a suit depending in said court between City of Louis, respondent and Bernard Schefe, appellant, judgment was dered against the said appellant, and the said Bernard Schefe, pellant, as aforesaid, having obtained a writ of error to the said urt to reverse the judgment in the aforesaid suit, and a citation di- ted to the said City of St. Louis, citing and admonishing it to be and pear at a Supreme Court of the United States to be held at Wash- ton, D. C. not exceeding thirty days from and after the date of citation in said cause,

Now, the condition of the above obligation is such, that if the said rnard Schefe shall prosecute said writ to effect and answer all

damages and costs, if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

BERNARD SCHEFE. [SEAL.]
BERNARD SCHEER. [SEAL.]
HERMANN IMMKEN. [SEAL.]

32 Sealed and delivered in presence of—
G. N. FICKEISSEN.
JAS. R. GRAY.
JAS. R. GRAY.

Approved by—
G. D. BURGESS, *Judge.*

UNITED STATES OF AMERICA, *Eastern District of Missouri,* } *sct:*

Before me, James R. Gray, United States commissioner at St. Louis, Missouri, personally appeared Bernard Scheer to me well known who upon oath states that he is worth over and above his indebtedness the sum of four thousand dollars, and that he owns real property to that amount, subject to execution in the city of St. Louis, Missouri.

[SEAL.] BERNARD SCHEER.

Subscribed and sworn to before me this 19th day of April, 1902.
JAMES R. GRAY,
United States Commissioner at St. Louis, Missouri.

UNITED STATES OF AMERICA, *Eastern District of Missouri,* } *sct:*

Before me, James R. Gray, United States commissioner at St. Louis, Missouri, personally appeared Hermann Immken, to me well known who upon oath states that he is worth over and above his indebtedness the sum of five hundred dollars, and that he owns real property to that amount subject to execution in the city of St. Louis, Missouri.

[SEAL.] HERMANN IMMKEN.

Subscribed and sworn to before me this 19th day of April, 1902.
JAMES R. GRAY,
United States Commissioner at St. Louis, Missouri.

UNITED STATES OF AMERICA, *Eastern District of Missouri,* } *sct:*

I do hereby certify that the parties subscribing the within bond are respectively over the age of twenty-one years, and are competent to contract, and that their signatures to said bond are genu-
33 ine: I further certify that said bond is good and sufficient.

Witness my hand and seal this 19th day of April, 1902.

[SEAL.] JAMES R. GRAY,
Clerk of the United States Circuit Court, Eastern District,
Eastern Judicial District of Missouri.

STATE OF MISSOURI, *sct:*

I, Jno. R. Green, clerk of the supreme court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the record and proceedings in a certain cause entitled The City of St. Louis *vs.* Bernard Schefe, as fully and complete as the same appear of record and on file in my said office.

In witness whereof, I have hereunto set my hand as clerk and affixed the seal of said court. Done at office, in the city of Jefferson, this 30th day of April, 1902.

[Seal of the Supreme Court of Missouri.]

JNO. R. GREEN, *Clerk.*

Endorsed on cover: File No. 18,573. Missouri supreme court. Term No. 62. Bernard Schefe, plaintiff in error, *vs.* The City of St. Louis. Filed June 5th, 1902.